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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/643,202	08/18/2003	Kathryn W. Hatlestad	14458.01	4063
7590	06/02/2006			EXAMINER FERNSTROM, KURT
David N. Fronek DORSEY & WHITNEY LLP Intellectual Property Department 50 South Sixth Street, Suite 1500 Minneapolis, MN 55402-1498			ART UNIT 3711	PAPER NUMBER
DATE MAILED: 06/02/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/643,202	HATLESTAD ET AL.	
Examiner	Art Unit	3711	
Kurt Fernstrom			

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ____ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 03 March 2006.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-9, 12 and 14-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 1-9, 12, 14, 15 and 20-23 is/are allowed.
- 6) Claim(s) 16-20 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 16-20 are rejected under 35 U.S.C. 102(b) as being anticipated by ASE Free Fall Simulators, provided by applicant as Exhibits A and B in the declaration of Don Kamis filed on September 2, 2004. Notwithstanding the statements made in the declaration, the brochures are printed publications, published more than one year before the effective filing date, and anticipate the invention. The brochures describe each of the limitations of the claims, such that one of ordinary skill in the relevant art would be able to create and use the invention.

Allowable Subject Matter

Claims 1-9, 12, 14, 15 and 21-23 are allowed.

The following is a statement of reasons for the indication of allowable subject matter: Essentially, the arguments presented with respect to these claims are persuasive. The brochures and publications provided by applicant do not disclose or suggest each of the features of the invention. In particular, there is no suggestion of a plurality of air intake openings which face upwardly as recited in claims 1, 12 and 22, or

of the louvers and recirculation chambers of claim 14, r of the canopy which extends as recited in claim 21 such that air inlet openings are located above the canopy.

Response to Arguments

Applicant's arguments filed on July 27, 2005 have been fully considered but they are not persuasive. In particular, the arguments pertaining to the dissemination of the brochures also fail to overcome the determination that they are printed publications. The number of items distributed to the public does not determine whether the item becomes a "publication". Rather, the test for determining whether an item is a printed publication is whether the item is accessible to the public. See *In re Klopfenstein*, 72 USPQ2d 1117 (CAFC 2004), *In re Hall*, 228 USPQ 453 (CAFC 1986) and *In re Bayer*, 196 USPQ 670 (CCPA 1978). In this case, by applicant's admission the brochures were provided to anyone who requested information. No steps appear to have been taken to preserve the secrecy of the contents therein, or to restrict dissemination of the brochures in any way. Even mailings to a relative handful of members of the public are sufficient to make the brochures printed publications. See MPEP 2128 and 2128.01.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hanawa discloses a free fall simulator.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kurt Fernstrom whose telephone number is (571) 272-4422. The examiner can normally be reached on M, T, Th 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Kim can be reached on 571 272-4463. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



KF
May 30, 2006

KURT FERNSTROM
PRIMARY EXAMINER